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December 20, 1968

DEPARTMENT OF LAW OPINION NO. 69-4 (R-37)

REQUESTED BY: JOHN M. POSEGATE, Acting Director
Arizona State Personnel Commission

QUESTION: 1. May the Highway Department, with consent of the Finance Commissioner pursuant to A. R. S. Sec. 35-173, transfer all of the amount for its full pro-rata contribution to the Personnel Commission for administrative employees of the Highway Department from either of the following:

- A. Residual appropriation for highway construction?
- B. Lined budget appropriations to the Highway Department?

ANSWER 1. A. No.
B. See opinion.

1. Article 9, Section 5, of the Arizona Constitution and particularly the last sentence thereof establishes the fundamental limitation upon expenditures by all State agencies. The language, "No money shall be paid out of the State Treasury except in the manner provided by law", has been construed to mean that no claim can be paid out of the state treasury unless the Legislature has made a valid appropriation for such purpose and funds are available for payment of the specific claim. Cockrill v. Jordan (1951) 72 Ariz. 318, 235 P. 2d 1009.

In addition thereto, Article 9, Section 14 of the Constitution of Arizona makes restrictions to the use of highway user revenues for highway purposes. Pursuant to this constitutional provision, the Legislature has provided in A. R. S. Sec. 18-131 for the establishment of a "state highway fund" and placed in it all highway user revenues. The Legislature has expressly limited the Highway Commission expenditures from the highway fund to a "budget law" and enumerated specific purposes for which highway funds may be expended in A. R. S. Sec. 18-132. These expenditures may be separated into two broad categories: first, administrative costs (e.g. salaries of administrative employees,

office expenses, telephone, etc.) and second, residual construction costs (e. g. right-of-way acquisition.)

To leave no doubt that highway fund monies were to be treated as public funds of the state, the Legislature declared the Highway Department to be subject to general state fiscal limitations. A. R. S. Sec. 18-134 provides:

"Expenditure of public monies

"The highway department is declared to be subject to the provisions of chapter 1 of title 35 relating to public finances, and all other acts of the legislature applicable to the expenditure of public monies. The highway department shall conform in all respects to the state budget system and no expenditures shall be made by the department unless and until they have first been authorized by the legislature and the money appropriated therefor. "

Both historically and in the General Appropriation Act, Laws 1968, Ch. 206, the Legislature has appropriated money from the highway fund to the Highway Department for administration of a lined budget. All balances in the highway fund were then appropriated for construction purposes.

A. R. S. Sec. 35-173, Sections A and B, as amended, 1968, which will be effective until January 2, 1969, provides:

"A. When an appropriation is authorized, and before any obligation thereon is incurred, the head of the budget unit to which the appropriation is made shall prepare an allotment request furnished by the auditor, subdividing the appropriation to coincide with the classes and subclasses of expenditures employed in the accounts of the auditor, and the auditor shall allot the appropriation accordingly, provided that the head of a budget unit may transfer funds from one class or subclass of expenditures to another, if the budget unit head obtains the approval of the department of finance. No transfer to or from personal services from any other budget class or subclass of expenditures shall be permitted.

"B. No allotment or expenditure shall be made for an object not within the purpose of the appropriation, and nothing in this chapter shall be construed to authorize the expenditure of an appropriation for a purpose other than for which it was made. "

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With reference to the lump sum construction funds the Legislature has placed statutory budget restrictions on the use of the funds in A. R. S. Sec. 18-135, which provides as follows:

"Budget estimates; preparation; publication; adoption

A. On or before the first Monday in June of each year the highway commission shall file with the governor its estimate of expenditures for construction and purchases of rights of way for the ensuing fiscal year. The estimates shall be by separate projects, setting up in detail the contemplated expenditures for construction and rights of way and shall specify in which counties the expenditures will be made.

B. On or before the second Monday in June of each year the construction and right of way budget estimates shall be published in at least one issue of a newspaper of general circulation in each county, together with notice that a public meeting will be held at the office of the commission on the third Monday in June, at which the construction and right of way budget will be considered and objections and protests heard. Following the meeting the commission may make changes in the construction and right of way budget.

C. On or before June 30 the commission shall adopt the construction and right of way budget as published or as amended and certify it to the auditor and treasurer. The budget shall thereupon become and remain the construction and right of way budget and shall limit expenditures for such purposes for the ensuing fiscal year, but no amounts of money shall be expended for such purposes in excess of the amount appropriated and authorized therefor by the legislature, nor for any purpose other than set forth in the legislative act authorizing the expenditures.

D. After adoption of the construction and right of way budget the commission shall print such numbers of copies thereof as may be required for the information of citizens. "

The Legislature has also provided special statutory restrictions on the transfer of funds from construction budget accounts in A. R. S. Sec. 18-137(A) which provides as follows:

"Transfer of budget accounts

A. The commission, by unanimous vote entered upon its minutes, may certify to the auditor and treasurer transfer of amounts from one construction budget account to any other construction budget account in the following cases only:

1. Budget items involving urban projects constructed with federal urban funds and state highway funds may be transferred to other urban projects.
2. When a credit remains to any budget item or account after completion of the work and complete discharge and satisfaction of all liabilities incurred on that account, but this transfer shall be limited to any other budget item in the construction budget."

It is well established in this state that when two statutes are in conflict, the special statute is controlling as an exception to the general statute. Mercado v. Superior Court (1938) 51 Ariz. 436, 77 P. 2d 810; Desert Waters Inc. v. Superior Court (1962) 91 Ariz. 163, 370 P. 2d 652. A. R. S. Sec. 35-173(A), as amended, which is the general statutory section dealing with the transfer of appropriated funds within a budget unit, is in direct conflict with A. R. S. Sec. 18-137(A), which provides for the transfer of Highway Department construction budget funds. Therefore, A. R. S. Sec. 18-137(A) is the statute which controls the transfer of construction funds, and thereunder construction budget funds may not be transferred from the construction budget to lined item administrative appropriations.

While funds may not be transferred from the highway construction appropriation to highway department administration appropriation, there is no prohibition against transferring funds from one class or subclass of the highway construction budget to another, or from transferring funds from one class or subclass of the highway administration budget to another, with the sole exception that funds may not be transferred to or from personal services appropriations.

The General Appropriation Act, Laws 1968, Ch. 206, Sub. 85, Administration, provides a specific appropriation from the highway fund for state personnel commission contributions of \$33,960.00. From the information furnished to this office by the Highway Department, it appears that this lined appropriation for employees paid from administrative highway funds is approximately one-half the amount per employee which has been assessed pursuant to A. R. S.

Sec. 38-906 by the Personnel Commission for the fiscal year 1968-69. It apparently was the Legislature's reasoning that because the Highway Department employees do not come under the State Personnel Commission's jurisdiction until January 1, 1969, the Highway Department should pay only one-half the pro-rata cost per employee of operating the Personnel Commission for the entire fiscal year. However, it is equally apparent that the Personnel Commission's expenses involved in adopting job classifications and pay plans for all state employees, including the Highway Department, must be incurred prior to January 1, 1969, in order to implement the merit system statutes. In spite of the fact that the Legislature did not appropriate a full pro-rata share contribution, they nevertheless have provided the vehicle for the payment of the contribution in A. R. S. Sec. 35-173(A), as amended, Laws 1968. Thereunder, the deficit amount of the full pro-rata contribution for each Highway Department employee covered under the merit system may be transferred from one class or subclass of Highway Administration lined appropriation to the subclass State Personnel Commission contribution under the following circumstances:

1. If the Highway Commission, as budget unit head, requests that the funds be transferred from one class or subclass to the State Personnel Commission contribution subclass.
2. That the request be made and approved by the Department of Finance prior to January 2, 1969, (effective date of conditionally enacted A. R. S. Sec. 35-173 which eliminates transferring of funds between classes and subclasses).
3. That the transfer is not made from personal services appropriations or from the lump sum highway construction appropriation.
4. That prior to the request for transfer it is determined that there are sufficient amounts in the class or subclass from which the transfer is made to permit the transfer yet still accomplish the purpose for which the appropriation was made.

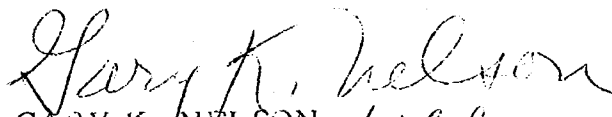
The Legislature, in the General Appropriation Act, Laws 1968, Chapter 205, has appropriated to the Arizona Highway Department a lump sum appropriation for construction purposes. The only statutory limitation placed on the use of these funds in the Appropriation Act is that they are to be used "exclusively for construction of state highways, including (1) national system of interstate highways within Arizona, (2) state primary system, (3) state secondary system, (4) county secondary (or primary system), (5) urban area routes; the acquisition of right of way; costs of field administration, field engineering on construction

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projects." Within this framework of this limitation and the constitutional limitation appearing in Article 9, Section 5, of the Arizona Constitution referred to earlier herein, the use of the appropriations for the Arizona Highway Department is to the following:

1. Purposes related to construction of the enumerated highways,
2. That the use be for a valid public purpose, and
3. That the money is available for such stated use.

Respectfully submitted,


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